

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2004-5
DIRECTOR, DEPARTMENT OF LABOR)	ORDER NO. 98
AND INDUSTRIAL RELATIONS,)	PRETRIAL ORDER
Complainant,)	
vs.)	
FOUR SEASONS RESORT HUALALAI,)	
Respondent.)	

PRETRIAL ORDER

Pursuant to the representations by counsel for the respective parties at an initial conference held by the Hawaii Labor Relations Board (Board) on June 1, 2004, IT IS HEREBY ORDERED THAT:

1. The issues to be determined are:
 - (a) Whether Respondent violated 29 CFR 1910.242(b) as described in Citation 1, Item 1, issued on May 4, 2004?
 - (i) Whether a hazard existed (i.e., whether compressed air was accurately measured)?
 - (ii) Whether any employee of Respondent was exposed to the hazard of being struck by flying materials and embolism injuries?
 - (iii) Whether the Respondent knew or should have known about the existence of a hazard and exposure of its employee?
 - (iv) Whether the characterization of the violation as "Serious" and the amount of the \$2,975.00 penalty are correct?
 - (b) Whether Respondent violated 29 CFR 1926.212(a)(1) as described in Citation 1, Item 2, issued on May 4, 2004?
 - (i) Whether a hazard existed (i.e., the cited standard requires

machine guarding for the mixers identified in the citation)?

- (ii) Whether any employee of Respondent was exposed to the hazard of getting any part of their extremities caught in or struck by a rotating mixer blade on the mixers identified in the citation?
 - (iii) Whether the Respondent knew or should have known about the existence of a hazard and exposure of its employee?
 - (iv) Whether compliance is feasible?
 - (v) Whether the characterization of the violation as "Serious" and amount of the \$1,700.00 penalty are correct?
- (c) Whether the unpreventable employee misconduct defense or any other affirmative defense is applicable?
2. Discovery deadlines are:
- | | |
|---|-----------------|
| Unnamed witness identification and identification of expert and exchange of reports | July 16, 2004 |
| Live witness identification | August 2, 2004 |
| Discovery cut-off | August 16, 2004 |
3. Trial is scheduled for two days commencing on September 1, 2004 at 9:30 a.m. in the above-referenced hearing room.
4. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, June 2, 2004.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. FOUR SEASONS
RESORT HUALALAI
OSH 2004-5
ORDER NO.
PRETRIAL ORDER


KATHLEEN RACUYA-MARKRICH, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees at least five working days prior to the trial date.

Copies sent to:

Leo B. Young, Deputy Attorney General
Jeffrey S. Harris, Esq.